

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED

In the Matter of

DEC - 9 2002

Rules and Regulations Implementing the  
Telephone Consumer Protection Act of  
1991

CG Docket No. 02-278

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF THE  
NEWSPAPER ASSOCIATION OF AMERICA

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**COMMENTS OF THE  
NEWSPAPER ASSOCIATION OF AMERICA**

**I. SUMMARY AND INTRODUCTION**

The Newspaper Association of America (“NAA”) hereby submits its comments in response to the Federal Communication Commission’s (“Commission” or “FCC”) *Notice of Proposed Rulemaking* (“NPRM”).<sup>1</sup> NAA is a non-profit organization representing more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90 percent of the daily newspaper circulation in the United States and a wide range of non-daily U.S. newspapers

**A. Comment Summary: FCC regulations should not unduly interfere with legitimate telemarketing by newspapers.**

The NAA and its members support the FCC’s re-examination of the *Telephone Consumer Protection Act* (“TCPA”)<sup>2</sup> in light of current marketing practices and technological developments. We offer these comments to help the Commission develop telemarketing rules that do not unduly burden responsible newspaper telemarketing. In particular:

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<sup>1</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, *Notice of Proposed Rulemaking*, 67 Fed. Reg. 62667 (October 8, 2002).

<sup>2</sup> 47 U.S.C. § 227; implementing regulations at 47 CFR § 64.1200.

- The FCC’s current company-specific “do not call” rules successfully allow consumers to block unwanted telemarketing calls without imposing onerous burdens on telemarketers. The FCC should maintain these rules, but reduce the period in which consumer opt-outs must be maintained from ten years to three years to reflect the rapid turnover in consumer phone numbers.
- The NAA believes that a national “do not call” registry is unnecessary and that the Commission should renew its rejection of such a registry as excessively expensive, unduly burdensome and not necessary to address privacy interests.
- If the FCC nonetheless implements a national “do not call” database, the agency should exempt telemarketing by newspapers, as explicitly authorized by the TCPA.
- At a minimum, national “do not call” regulations must continue to allow telemarketing to consumers with whom a company has an established business relationship. In the past decade, the FCC’s established business relationship exemption has demonstrated its viability, and the Commission should simply extend that exemption to any national “do not call” initiative.
- In making marketing calls, newspapers gain significant efficiencies from predictive dialers and use them responsibly. The NAA urges the Commission not to impose undue regulation on the use of this technology, but is not opposed to setting a maximum abandonment rate of five percent in accordance with industry standards.
- Newspapers should not be required affirmatively to provide caller-ID information. Where possible, newspapers provide consumers with caller-ID information when placing telemarketing calls, but network limitations prevent the transfer of such information in many cases.

While NAA has chosen to focus on the foregoing issues, it also has concerns whether a national “do not call” registry would infringe on constitutionally-protected commercial free speech. The Commission must conduct a careful calculation of the burdens of a “do not call” program on legitimate telemarketing, as well as the benefits such a program may confer, in order to tailor such a program narrowly.<sup>3</sup>

**B. Newspapers are responsible telemarketers.**

For sixty years, newspapers have engaged in telemarketing in a responsible manner. NAA members work hard to comply with state and federal telemarketing laws and regulations, not only due to legal requirements, but also because good telemarketing practices make business sense. Unlike many other telemarketers, a newspaper bearing a community’s name and reporting its news must engage in responsible marketing, or risk displeasing subscribers and prospective subscribers. If there is a problem with a subscription, whether it is sold over the phone or otherwise, subscribers know how to find their local newspaper. Newspapers must respect local consumers. Indeed, newspapers’ most important asset is their reputation within their local community.

In addition to market forces, industry culture distinguishes newspapers from those telemarketers that do not invest in forming long-term relationships with consumers. The vast majority of newspapers are local businesses deeply rooted in the communities in which they publish, circulate and market. Even national newspapers like *The Wall Street Journal* and *The New York Times* have a base of subscribers in the local area of their publication and provide news coverage and services specific to their resident communities. Newspapers cannot cover local news without becoming closely involved in local communities and their concerns. Close

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<sup>3</sup> See *Central Hudson Gas & Elec. Corp. v. Public Service Commission*, 447 U.S. 557 (1980)

ties between a newspaper and the local community create compelling incentives to engage in responsible telemarketing practices.

**C. Telemarketing is important to the fiscal health of newspapers and provides a convenient subscribing method for hundreds of thousands of consumers.**

Telemarketing has become a key component of the newspaper business. In recent years, newspaper readership has declined, and competition from other media has grown. Newspapers face an ever-increasing “churn” rate<sup>4</sup> in their subscribership while customer-initiated subscription starts have declined.’ Each year, the typical newspaper must sell on average 60 percent of its total home-delivery circulation just to maintain the current circulation level.’

Marketing by telephone is the most effective means of obtaining new subscribers and renewing subscriptions for newspapers of all sizes.<sup>7</sup> In 2000, 57.8% of new subscriptions resulting from a newspaper’s sales efforts came from outbound telemarketing — by far the single largest source of new subscribers.’ Over 88 percent of all NAA members engage in telemarketing. Of newspapers with circulation over 25,000, nearly all engage in marketing by phone; the rate of telemarketing use in newspapers with circulation less than 25,000 is over 80 percent.’

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<sup>4</sup> The “churn” rate is defined as a newspaper’s total subscription sales during a period of time divided by its home delivery circulation during that period.

<sup>5</sup> Newspaper Association of America, *2001 Circulation Facts, Figures & Logic*, 43 (2001). The rate of customer-initiated subscription starts has declined from roughly 30 percent in 1996-98 to less than 25 percent of all new starts in 2000.

<sup>6</sup> *Id.* at 109.

<sup>7</sup> *Id.* at 47

<sup>8</sup> *Id.* at 10, 44.

’*Id.* at 47.

Each year, hundreds of thousands of people subscribe to newspapers in response to a telemarketing call, achieving substantial savings over newsstand prices. As discussed further below, NAA members have serious concerns about national “do not call” regulations because they could severely impact well-established – and demonstrably inoffensive – newspaper marketing practices. NAA members generally find that people who have recently moved into a community often appreciate the opportunity presented by a telemarketing call to subscribe to a local newspaper. Others welcome the calls as reminders to renew a subscription. In addition, consumers request placement on newspapers’ company-specific “do not call” lists at relatively low rates. Consumer response to newspaper telemarketing demonstrates that these calls often provide a convenience and suggests that many consumers are willing to receive calls from newspapers when they would object to telemarketing from other businesses. A national “do not call” list could bar newspapers’ initial marketing calls to the large group of consumers who do not object to such calls.

**11. COMPANY-SPECIFIC “DO NOT CALL” LISTS PROTECT CONSUMERS WITHOUT UNNECESSARILY BURDENING LEGITIMATE TELEMARKETERS.**

NAA and its members believe that the Commission’s rules compelling companies to maintain internal “do not call” lists succeed in balancing the TCPA’s directives to protect individuals’ privacy rights to avoid receiving telephone solicitations to which they object” and to avoid unnecessary burdens on the telemarketing industry.’’ The reasoning adopted by the FCC a decade ago in the *Report and Order in the Matter of Rules and Regulations Implementing*

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<sup>10</sup> See 47 U.S.C. § 227(c)(1).

<sup>11</sup> See *NPRM*, FCC 02-250 at ¶ 1

*the Telephone Consumer Protection Act of 1991 (“TCPA Order”)* remains sound.<sup>12</sup> Internal “do not call” lists facilitate consumer choice over telemarketing calls received and provide a low-cost, easily administered method for safeguarding consumer privacy. The NAA and its members believe, however, that the duration of a consumer opt-out on a company-specific list should be three years, instead of ten years as established in the current rule, in light of rapid turn-over in residential telephone numbers.

**A. Current FCC rules requiring company-specific “do not call” lists protect consumer privacy and facilitate consumer choice.**

Newspapers’ experience under the current rule confirms the FCC’s conclusion in the *TCPA Order* that company-specific “do not call” lists both safeguard consumer privacy and give consumers’ choice among telemarketers from whom they do and do not wish to hear.<sup>13</sup>

Newspapers respect consumers’ requests to opt-out from telemarketing through placement on a newspaper’s internal “do-not-call” list, as required by FCC rules.<sup>14</sup> In fact, even prior to the Commission’s adoption of the current rule, many newspapers maintained internal “do not call” lists as part of a policy of responsible business practice.<sup>15</sup>

Further, newspapers generally honor *subscribers’* opt-out requests, even though the “established business relationship” exception may not require them to do so.<sup>16</sup> Indeed, upon

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<sup>12</sup> CC Docket No. 92-90, FCC 92-443, 7 FCC Rcd. 8752 (October 16, 1992).

<sup>13</sup> See *TCPA Order* at 8761

<sup>14</sup> See 47 C.F.R. § 64.1200.

<sup>15</sup> See *Comments of the American Newspaper Publishers Association*, In the Matter of the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, at 8 (May 26, 1992).

<sup>16</sup> See 47 U.S.C. § 64.1200(f)(3)-(4). Responding to the Commission’s inquiry in the NPRM regarding newspapers, subscribers desiring to stop future telemarketing from newspapers do not need to cancel their subscription in order to vacate the “established business relationship” exception and give effect to their opt-out request.



request, newspapers place subscribers on internal “do not call” lists for a period of ten years, as required by the current rule, even if subscribers maintain their business relationship with the newspaper throughout that period.

The experience of newspapers demonstrates that the current framework of company-specific “do not call” lists accommodates a wide range of consumer choices regarding newspaper telemarketing. A recent informal NAA survey showed that the rate at which individuals request placement on a newspaper’s internal “do not call” list is generally low, but opt-out rates are variable. For example, the *New York Times*, the *Washington Post*, the *Montgomery Advertiser* in Alabama and the *Port Huron Times Herald* in Michigan report approximately one to three percent opt-out rates. One newspaper group reports that about two percent of individuals who receive a telemarketing call opt-out from further telemarketing.<sup>17</sup> A firm specializing in providing telemarketing services to newspapers reports that from January to March 2002, 1.4 percent of consumers contacted requested placement on newspapers’ internal “do not call” lists.<sup>18</sup> Most newspapers surveyed by NAA reported opt-out rates within a range of 0.5 percent to 4 percent of the pool of likely subscribers, but some experience rates that are significantly higher. This result demonstrates that the FCC’s existing rules successfully allow different consumers to exercise different preferences. A company-specific opt-out, unlike a universal opt-out under a national “do not call” list, allows consumers to receive telephone solicitations where

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<sup>17</sup> Based on an informal survey of Advance Publications daily newspapers, which indicated that about two percent of consumers contacted by telemarketers requested to be placed on the newspaper’s internal “do not call” list.

<sup>18</sup> Based on a random selection of ten newspaper telemarketing campaigns executed by Circulation Services between January and March 2002. Of the 1,871,246 consumers contacted by Circulation Services in these campaigns, 26,848 (1.4 percent) made requests to be placed on the relevant newspapers’ internal “do not call” list.

they desire that convenience, but also provides a ready method for stopping unwanted solicitations.

**B. The Commission should revise its rules to require companies to maintain consumer opt-out information for three years instead of ten years.**

As in previous proceedings before the FTC, NAA recommends that consumer opt-outs from a company's telemarketing expire after three years. This approximates the rapid turnover in residential phone numbers. A substantial number of Americans move every year, and an estimated 20 percent change their residential phone number.<sup>19</sup> Without a much shorter expiration date on "do not call" requests, companies' internal lists quickly become obsolete, inappropriately limiting newspaper access to potential and existing subscribers who may welcome a call from their local newspaper. In addition, a ten-year duration allows internal "do not call" lists to grow to an extremely burdensome size. Even if only a small percentage of newspapers' calling populations opts-out from further telemarketing, newspapers bear significant costs maintaining "do not call" records accurately and securely.

The use of phone numbers alone to opt-out from a company's telemarketing, without requiring a name in addition, contributes to this problem. The FCC has determined that consumers may opt-out from a company's telemarketing by disclosing only their telephone numbers, and not their names.<sup>20</sup> A substantial portion of the phone numbers appearing on a company's internal "do not call" list will inevitably pass to consumers who did not personally request placement on that internal list.

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<sup>19</sup> See *TCPA Order* at 8759

<sup>20</sup> See Memorandum *Opinion and Order in the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 FCC Rcd. 12391, FCC 95-310 at ¶ 9 (released August 7, 1995).

### III. A NATIONAL “DO NOT CALL” LIST WOULD NOT BE EFFICIENT, EFFECTIVE OR ECONOMIC, AS REQUIRED BY THE TCPA.

NAA believes that a national “do not call” list would significantly increase the burden on legitimate telemarketers and not provide consumers substantially more privacy than company-specific “do not call” lists. The TCPA requires the Commission to balance the “effectiveness” of a method for avoiding unwanted telemarketing solicitations with its “cost and other advantages and disadvantages.”<sup>21</sup> Further, telemarketing regulations promulgated under the TCPA must be “efficient, effective and economic.”<sup>22</sup> The NAA urges the Commission to renew its conclusion that a national database falls short of these statutory requirements.<sup>23</sup>

The TCPA recognizes that telemarketing has many legitimate purposes, and there is no presumption that telephone subscribers need a method to shun all telephone solicitations. NAA believes that consumers’ current ability to reject telemarketing on a company-by-company basis satisfies the TCPA mandate to protect individuals’ privacy rights in avoiding unwanted telemarketing.<sup>24</sup> Further, company-specific lists allow consumers to bar *only* the telephone solicitations to which they object, rather than the “all or nothing” choice under a national database framework.

Maintaining and administering a national “do not call” list is likely to be as expensive today as the \$20 million to \$80 million projections estimated a decade ago.<sup>25</sup> In order to keep registries current with turnover in residential phone numbers, the FCC must be prepared to

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<sup>21</sup> 47 U.S.C. § 227(c)(1)(A).

<sup>22</sup> 47 U.S.C. § 227(c)(2).

<sup>23</sup> See *TCPA Order* at 8761, 8765,

<sup>24</sup> See 47 U.S.C. § 227(c)(1).

<sup>25</sup> See *TCPA Order* at 8758.

update its “scrubbing” lists regularly, which will require substantial technical and human resources.<sup>26</sup> Coordinating with a growing number of state “do not call” lists and a possible national registry managed by the Federal Trade Commission (“FTC”) will add to the complexity. In addition, substantial investment would be required to maintain the security of a system containing the personal information of potentially millions of people yet allowing access to thousands of telemarketing businesses. While the FCC noted that keeping company-specific “do not call” lists implied minimal expense,<sup>27</sup> the agency recognized that at least part of the cost of a national database ultimately would be passed on to consumers in higher prices for telemarketed goods and services.<sup>28</sup>

In addition, a national “do not call” list would merely compound administrative burdens faced by newspapers. Much of newspaper telemarketing is directed to existing and prior customers, individuals who have had the opportunity to opt-out from newspapers’ telemarketing but have chosen not to do so. If the FCC were to implement a national “do not call” framework, newspapers would bear the unnecessary but substantial administrative burden of continually “scrubbing” telemarketing contact lists against a multitude of state, FCC and possibly FTC lists, even though these lists are largely unrelated to the newspapers’ local target audience.

The relatively low costs and administrative burdens implicit in the FCC’s current telemarketing rules benefit newspapers of all sizes, but may be particularly important to newspapers with circulation less than 50,000. Although small businesses maintain an internal “do not call” list, working with outside “do not call” registries requires serious additional

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<sup>26</sup> *See id.* at 8760.

<sup>27</sup> *Id.* at 8761.

<sup>28</sup> *Id.* at 8760.

investments in human and technological resources. The TCPA requires the FCC not to “place an unreasonable financial burden on small businesses.”<sup>29</sup>

These burdens are cascading as the FCC, FTC and multiple states are proposing and enacting multiple, inconsistent requirements. Because the FCC has not issued a specific proposal and the FTC’s final rule in the current Telemarketing Sales Rule proceeding has not been released,<sup>30</sup> NAA cannot identify specific conflicts. Nonetheless, NAA anticipates ambiguity in at least the following areas: (a) the authority of the FCC to pre-empt state “do not call” laws, as the TCPA allows states to build on FCC restrictions and maintain state “do not call” lists;<sup>31</sup> (b) the extent of state authority over interstate calling to state residents; (c) the effect of an established business relationship where it allows telemarketing under one applicable regulatory regime but not another; and (d) the interaction between FCC and FTC “do not call” regulations, as the FCC is the only federal agency with clear statutory authority to create a national “do not call” list.

The FCC should reject the national “do not call” database concept due to its cost, administrative demands, detrimental effect on small businesses, potential to cause conflicts with other state and federal telemarketing regulations, and ultimately, its unproven superiority to the current company-specific “do not call” framework.

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<sup>29</sup> 47 U.S.C. § 227(c)(4)(B)(iii); *see also id.* at § 227(c)(4)(A) (In establishing procedures for access to a national “do not call” list, the Commission must consider the different needs of businesses operating at a local level).

<sup>30</sup> *See In the Matter of Telemarketing Rulemaking*, Federal Trade Commission File No. 411001.

<sup>31</sup> *See* 47 U.S.C. § 227(e).

**IV. IF THE COMMISSION ADOPTS A NATIONAL “DO NOT CALL” REGISTRY, IT SHOULD EXEMPT NEWSPAPERS FROM NATIONAL “DO NOT CALL” OBLIGATIONS.**

If the FCC determines that it should implement a national “do not call” rule, it should exercise its clear authority under the TCPA to exempt newspapers. Exempting newspapers from national “do-not-call” obligations would pose no significant risk to consumers, and indeed, would help maintain the benefits consumers receive from newspapers. At the same time, exempting newspapers is important for their financial viability. Twelve states already have exempted newspapers from certain telemarketing regulations or from restrictions on calling state residents appearing on “do not call” lists managed by the state.<sup>32</sup>

NAA believes that exempting newspapers but requiring them to continue honoring individuals’ opt-out requests on company-specific “do not call” lists for three years would allow consumers to avoid unwanted telemarketing calls and satisfy the TCPA. The statute gives the Commission authority to exempt newspapers when adopting a national “do not call” registry. In promulgating “do not call” regulations, the TCPA requires the Commission to consider “whether different methods and procedures” for avoiding unwanted telemarketing calls should apply to “local telephone solicitations” or to “holders of second-class mail permits.”<sup>33</sup> The vast majority of newspapers telemarket only to local communities as well as hold second-class mail permits (now known as “periodical permits”).<sup>34</sup>

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<sup>32</sup> Alabama, Alaska, Arkansas and Florida have exempted newspapers from “do not call” restrictions. Indiana exempts newspapers from “do not call” obligations if they use their own employees or volunteers to make calls. The Louisiana Public Service Commission has exempted newspapers from the state’s “do not call” program. In Idaho, Nevada, North Dakota, Oklahoma, Oregon and Washington, newspapers are exempt from certain telemarketing regulations.

<sup>33</sup> 47 U.S.C. § 227(c)(1)(C).

<sup>34</sup> See the U.S. Postal Service website, <http://pe.usps.gov/textldmm/e211.htm#Rci11898> (last visited December 3, 2002).

Sound policy reasons justify a newspaper exemption. Newspapers, like other local telemarketers, are dependent on local goodwill and are sensitive to community standards and concerns. Newspapers' sixty years of responsible telemarketing demonstrate that existing restrictions are plainly adequate with respect to newspapers. The generally low rate of "do not call" requests made to newspapers demonstrates that most consumers gain value from, and are not offended by, these marketing calls. In addition, the large percentage of newspaper subscription "new starts" and renewals from telemarketing demonstrates that significant numbers of residents appreciate receiving newspaper telemarketing calls, even where they might not wish to receive other types of calls.<sup>35</sup> Many subscribers that might register on a national database would otherwise welcome a telemarketing call from the local newspaper.

Newspapers are unique among commercial telemarketers in their role of providing for an informed citizenry. Newspapers are the primary source of information about local government, and often serve as a forum for the publication of legal notices and reports of actions of the city council, county board, or state legislature. NAA recommends that the Commission recognize the important role of newspapers in our democracy by exercising its authority to grant newspapers a full exemption to all national "do-not-call" registry requirements. Newspaper exemptions are hardly unprecedented; not only have a number of states chosen to exempt newspapers from telemarketing "do not call" lists, but Congress itself has already recognized the valuable role of newspapers by providing for reduced postage rates for newspapers and other periodicals."

A national "do not call" restriction could severely limit the ability of many newspapers to reach their local reader base and undermine their financial viability. For newspapers, marketing

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<sup>35</sup> See Newspaper Association of America, *supra* note 8

<sup>36</sup> See 39 U.S.C. § 3622(b)(8) and 39 U.S.C. § 3626 (a)(1) (referencing former 39 U.S.C. § 4358) (concerning in-country newspaper postage rates.).

by phone is an established way of doing business. Increasing subscriber “churn” rates have recently made telemarketing an essential tool to maintain subscriber levels.<sup>37</sup> Some markets now have more than 15 percent of total telephone numbers on state and internal company “do not call” lists that make consumers unreachable.<sup>38</sup> The TCPA requires the FCC to consider the burdens on business, especially small business,)’ and the NAA respectfully requests the Commission to adopt a newspaper exemption to fulfill this statutory requirement.

**V. IF NEWSPAPERS ARE NOT EXEMPT FROM A FCC “DO NOT CALL” REGISTRY, THE COMMISSION MUST ALLOW NEWSPAPERS TO CONTACT INDIVIDUALS WITH WHOM THEY HAVE AN ESTABLISHED BUSINESS RELATIONSHIP.**

NAA believes that newspapers should be free to contact their subscribers even if they have registered on a federal or state “do not call” list. NAA urges the Commission to extend the current “established business relationship” exemption to any new national “do not call” initiative. If subscribers do not wish to receive further telemarketing calls from newspapers, the current FCC rules allow them to request placement on an internal “do not call” list.

The NAA believes it is clear that the relationship between newspapers and their subscribers constitutes an “established business relationship” within the meaning of the TCPA. The legislative history reflects a congressional intent that businesses should be allowed to call existing or previous customers to “build upon, follow up, or renew within a reasonable period of

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<sup>37</sup> Newspapers had to sell more subscriptions in 2000 than ever before just to break even. Many newspapers are experiencing higher subscriber churn and receiving fewer reader- initiated subscription starts. See Newspaper Association of America, *supra* note 6.

<sup>38</sup> See Newspaper Association of America, *supra* note 5, at 49. This statistic is not specific to newspapers’ internal “do not call” lists and is a general telemarketing industry measure.

<sup>39</sup> See 47 U.S.C. § 227 (c)(4)(B)(iii); see also *id.* at § 227(c)(4)(A) (In establishing procedures for access to a national “do not call” list, the Commission must consider the different needs of businesses operating at a local level).



time” the customer relationship.<sup>40</sup> In listing examples of calls pursuant to an “established business relationship,” the House Report states that publications “could call their current subscribers to continue their subscriptions even if such subscribers objected to ‘unsolicited’ commercial calls.”<sup>41</sup> Furthermore, publishers “would be able to call someone who has let their subscription lapse.”<sup>42</sup> Accordingly, the NAA believes that the Commission should extend the current “established business relationship” exception, which covers present and past newspaper customers, to any national “do not call” framework.

## **VI. THE COMMISSION SHOULD NOT IMPAIR THE RESPONSIBLE USE OF PREDICTIVE DIALERS.**

NAA firmly contends that newspapers use predictive dialers responsibly, and FCC regulations should not overly limit their use. Banning predictive dialers would erode the significant efficiencies that predictive dialers provide to newspapers of all sizes.<sup>43</sup> Two-thirds of newspapers that engage in telemarketing use predictive dialers, including 40 percent of newspapers with less than 25,000 readers and 96 percent of those with more than 100,000 readers.<sup>44</sup> This technology reduces newspaper costs by accurately performing all the automatic tasks associated with telemarketing, freeing up operators (the high-cost input) to spend their time engaged in person-to-person contact. If the Commission effectively bars newspapers from using

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<sup>40</sup> See House Comm. on Energy and Commerce, Telephone Advertising Consumer Rights Act, H.R. Rep. No. 317, 102d Cong., 1<sup>st</sup> Sess. 14 (1991).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See Newspaper Association of America, *supra* note 5, at 48 (2001).

<sup>44</sup> *Id.*

predictive dialers, they will face higher marketing costs to achieve the same number of sales. These costs must be absorbed or passed on to readers and advertisers.

In a recent informal survey, NAA was unable to identify a single newspaper that used predictive dialers to call fax machines, deliver artificial or pre-recorded marketing messages or telemarket to wireless customers. All reported that if the newspaper inadvertently called a fax machine or wireless phone number, it immediately removed that number from telemarketing contact lists. Newspapers do not use predictive dialers to target calls to emergency services, hospital rooms or customers who pay to receive calls. Instead, newspapers take steps to ensure that such numbers are not added to their contact lists.<sup>45</sup> At the same time, predictive dialers are an efficient and effective means for complying with existing “do not call” regulations because databases used by predictive dialers are easier to “scrub.”<sup>46</sup>

Newspapers that use predictive dialers have strong incentives to minimize abandonment rates. As noted above, newspapers have vested interests in their communities and avoid telemarketing practices that would lead to consumer dissatisfaction. Moreover, newspapers pay toll charges to telephone companies whenever a consumer answers an interstate telemarketing call, even an abandoned call. Higher abandonment rates generally translate into higher telephone bills without a greater number of sales.

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<sup>45</sup> Although newspapers’ use of predictive dialers happens to comply with FCC rules concerning “autodialers” and “automatic telephone dialing systems,” NAA does not believe that predictive dialers should be classified in these regulatory categories. *See* 47 CFR § 64.1200(a)(1). Predictive dialers generally are used to target only those consumers likely to be interested in an offer, rather than to generate numbers randomly or sequentially as an autodialer would under the TCPA’s definition. *See* 47 U.S.C. § 227(a)(1). Thus, the use of predictive dialers is likely to offer consumers more benefits than the kind of autodialer the statute apparently intends to regulate.

<sup>46</sup> *See* Newspaper Association of America, *supra* note 5, at 48 (use of predictive dialer technology has become critical for newspapers’ management of various “do-not-call” lists.)

NAA believes that no mandatory maximum abandonment rate is required for newspapers because they adequately self-regulate in their use of predictive dialers. Standard newspaper industry abandonment rates vary between five and ten percent based on a variety of factors such as the time of year, the type of offer and the telemarketing campaign plan. If the Commission does set an abandonment rate, it should be no lower than five percent per telemarketing campaign.

## **VII. NAA SUPPORTS RESTRICTIONS ON TELEMARKETERS' EFFORTS TO BLOCK CALLER-ID.**

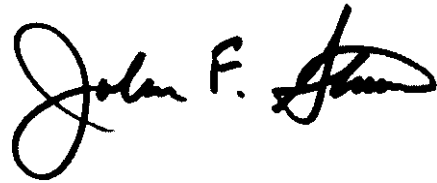
NAA supports limiting the blocking of caller-ID services, so long as the Commission does not affirmatively require telemarketers to display caller-ID information. Newspapers intentionally provide caller-ID information when the capability exists because it is consistent with good telemarketing practice. However, limitations associated with T-1 lines, outdated telecommunications switching equipment and other technologies make it impossible for newspapers affirmatively to provide caller-ID information in many cases.

## **VIII. CONCLUSION**

In the experience of newspapers, company-specific “do not call” lists protect consumer privacy and facilitate consumer choice without unnecessarily burdening legitimate telemarketers. The FCC should continue its company-specific regulatory approach but reduce the consumer opt-out period from ten years to three years to reflect the rapid turnover in consumer phone numbers. Further, NAA members have serious concerns that a national “do not call” registry would curtail inoffensive newspaper telemarketing appreciated by consumers without effectively increasing consumer privacy. As authorized by the TCPA, newspapers should be exempted from any national “do not call” regulations adopted by the Commission. The vast majority of

newspapers are local businesses that engage in responsible telemarketing under the current, company-specific “do not call” framework. If the FCC imposes federal “do not call” restrictions on newspapers, the agency must allow telemarketers to call their existing and past customers. Finally, regulations of the use of predictive dialers should be carefully designed to limit only genuinely abusive practices, and not interfere with the accuracy, efficiency and cost effectiveness of this technology.

Respectfully submitted,



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